

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, DC 20007

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

JOHN J. HEITMANN

EMAIL: jheitmann@kelleydrye.com

NEW YORK, NY
LOS ANGELES, CA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICE
MUMBAI, INDIA

August 24, 2016

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Joint Lifeline ETC Petitioners Oral *Ex Parte* Presentation;
WC Docket Nos. 11-42, 09-197, 10-90

Dear Ms. Dortch:

On August 22, 2016, John Heitmann and Joshua Guyan of Kelley Drye & Warren LLP met on behalf of the Joint Lifeline ETC Petitioners¹ with Trent Harkrader, Jodie Griffin, Christian Hoefly and Nathan Eagan from the Wireline Competition Bureau to discuss the Lifeline program and the Petition for Reconsideration and Clarification² filed by the Joint Lifeline ETC Petitioners and the subsequent Opposition³ and Reply.⁴ The discussion was consistent with the attached summary of positions in the Petition, Opposition and Reply.

The Joint Lifeline ETC Petitioners look forward to providing broadband Lifeline services under the new frameworks identified in the Lifeline Modernization Order and to working with the

¹ The members of the Joint Lifeline ETC Petitioners are American Broadband & Telecommunications Company, Blue Jay Wireless, LLC, i-wireless LLC, Telrite Corporation (collectively, the Lifeline Connects Coalition), and Assist Wireless, LLC, Easy Telephone Services Company d/b/a Easy Wireless, Prepaid Wireless Group LLC and Telscape Communications, Inc./Sage Telecom Communications, LLC (d/b/a TruConnect).

² See Joint Lifeline ETC Petitioners' Petition for Partial Reconsideration and Clarification, WC Docket Nos. 11-42, 09-197, 10-90 (filed June 23, 2016) (Petition for Reconsideration).

³ See Joint Lifeline ETC Petitioners' Opposition to Petitions for Reconsideration, WC Docket Nos. 11-42, 09-197, 10-90 (filed July 29, 2016) (Opposition).

⁴ See Joint Lifeline ETC Petitioners' Reply in Support of Their Petition for Reconsideration, WC Docket Nos. 11-42, 09-197, 10-90 (filed Aug. 8, 2016) (Reply).

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Commission and USAC on ways to improve the enrollment processes both before and after the National Verifier is implemented.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically.

Respectfully submitted,



John J. Heitmann
Joshua Guyan
Kelley Drye & Warren LLP
3050 K Street, NW
Suite 400
Washington, DC 20007
(202) 342-8400

*Counsel for American Broadband &
Telecommunications Company, Blue Jay
Wireless, LLC, i-wireless LLC, Telrite
Corporation (collectively, the Lifeline
Connects Coalition), and Assist Wireless, LLC,
Easy Telephone Services Company d/b/a Easy
Wireless, Prepaid Wireless Group LLC and
Telscape Communications, Inc./Sage Telecom
Communications, LLC (d/b/a TruConnect)*

cc: Trent Harkrader
Jodie Griffin
Christian Hoefly
Nathan Eagan

Lifeline Connects Coalition

Petition for Partial Reconsideration and Clarification; Filed June 23, 2016

Opposition to Petitions for Reconsideration; Filed July 29, 2016

Reply in Support of Their Petition for Reconsideration; Filed August 8, 2016

The Lifeline Connects Coalition applauds the Commission for taking important steps in the Lifeline Modernization Order to bring the Lifeline program further into the 21st Century. However, several aspects of the adopted rules would undermine the important goals of the Lifeline program. In its petition for reconsideration and clarification, the Coalition offers targeted proposals for rule changes or clarifications that would enhance competition, consumer dignity and innovation, while removing unnecessary friction and confusion in the rules as initially adopted.

I. The Commission's Minimum Service Standards Should Be Revised to Account for the Affordability Challenges of Low-Income Americans and the Continuing Value of Voice Service

- **Modify the Minimum Service Standard Formula and Adopt a More Graduated Phase-In.** In the Lifeline Modernization Order, the Commission establishes a minimum service standard that disregards the Lifeline Program's "central touchstone" of affordability for determining the minimum service standard. It is literally not part of the "formula". The formula is also based on meeting the needs of an average multi-member household and would disproportionately impact smaller-than-average households by forcing them to buy more data than they likely want or need. The Coalition proposes an alternative formula for devising the minimum service standard that directly addresses the infirmities of the Commission's adopted formula, but would still provide an evolving and generous level of service for low-income consumers. That proposal is as follows:
 - **Step 1:** the Commission determines the average mobile broadband data usage per individual as reported by the Commission in its annual Mobile Competition Report, rounds that number to the nearest hundredths place, multiplies that result by 0.7 "to adjust for the fact that in these circumstances a 'substantial majority' of subscribers will use less than the average," and rounds that result down to the nearest 250 MB.
 - **Step 2:** the Commission compares the result of Step 1 to the average retail price of similar offerings in the market to determine whether the minimum standard would be "reasonably affordable to the average low-income single-person household." If the answer is "yes," then the result of Step 1 will be the minimum service standard. If the answer is "no," then the Commission will take steps necessary to make the minimum service standard affordable, e.g., by lowering the standard or increasing the subsidy. In either case, the minimum service standard will be effective beginning December 1 of the following year.

If this framework were applied today based on the average individual usage (1.361 GB per month), Step 1 would result in a starting minimum service standard of 750 MB per month beginning December 1, 2017. Based on average usage increases over the last several years (approximately 240 MB per year), we project that the minimum service standard beginning December 1, 2018 would be 1 GB, followed by 1.25 GB on December 1, 2019. Using current pricing as a foundation, we believe that this standard accurately reflects market trends and in the near term would not require resorting to the safety valve.

There is substantial support from other petitioners, including CTIA, Sprint, TracFone and Q-Link that the Commission should reconsider the broadband minimum service standard formula.

- **Complete the State of the Lifeline Marketplace Report Before Sunsetting Voice Support.** The Commission should not step down support for mobile voice Lifeline service until it has completed its review of the Wireline Competition Bureau's (Bureau's) State of the Lifeline Marketplace Report because ETCs will not be able to provide the voice minimum service standards at the reduced reimbursement rate and consumers will start to lose access to voice service, including emergency calling. The Bureau should submit the Report by June 30, 2019. There is substantial support from other petitioners and commenters, including GVNW,

NASUCA, Sacred Wind, NTCA and WTA and TracFone, that the Commission should reconsider the voice phase-out.

- **Clarify Decrementing Rules for Bundles.** The Commission should clarify that ETCs may meet the minimum service standards for mobile broadband service through a broadband offering that meets the minimum service standard but can be decremented with either voice, text or broadband usage in the same manner that consumers currently decrement voice plans through text messaging, which should also continue to be permitted.

II. The Commission Should Reconsider or Clarify Several Issues Related to the National Lifeline Eligibility Verifier

- **Enable real-time eligibility verification.** The Commission should clarify that the National Verifier will verify eligibility in real-time. Real-time enrollment is essential to preserving equality of consumer experience for low-income and non-low-income consumers; the dignity of low-income consumers; and the ability for ETCs to provide advanced handsets and services.
- **Adopt common-sense safe harbors.** The Commission should adopt several safe harbors to encourage participation of Lifeline broadband providers by easing the enforcement risks for ETCs including: a safe harbor for enrollments using the National Verifier since ETCs will not retain eligibility documentation and a safe harbor for ETCs that use any universal or standardized forms that the Bureau or USAC adopts.

III. The Commission Should Extend Streamlined Consideration to All ETC Petitions

- The Commission should extend the 60-day streamlined designation process to voice-based ETC petitions, which will increase competition in the voice Lifeline market, driving down costs and promoting service-level innovation.
- The Commission should also impose streamlined processing for appeals, guidance and other decisions affecting the Lifeline program such that ETC requested actions are deemed granted if not acted upon in a set timeframe.
- NASUCA's opposition to a streamlined voice ETC application process ignores the overwhelming evidence that the current process takes an unreasonable amount of time. At the state level, ETCs face unreasonable delays. For example, the New Mexico Public Regulation Commission has not approved a single ETC application since 2012, and the Washington Utilities and Transportation Commission has left three ETC applications pending for an average of 31 months. There is no justifiable reason why these applications should be left pending for more than three months, let alone four years or more.

IV. The Commission Should Refine Certain Aspects of the Rolling Recertification Rule, and Consider a Delay in Implementing the Rule Until the National Verifier is Established

- The Commission should clarify that ETCs will be heavily involved in the recertification process through customer contact and information collection.
- The Commission should reconsider its decision not to require ETCs to recertify subscribers that switched service providers in the same year because this will confuse and unnecessarily burden consumers and result in de-enrollment of more eligible Lifeline subscribers each year.
- We agree with GCI, NTCA, WTA and USTelecom that the Commission should delay the transition to rolling recertification until the National Verifier is in place. The rolling recertification rule will impose tremendous burdens on ETCs, requiring them to modify systems to track each subscriber's recertification date, which could be especially burdensome for smaller ETCs.
- The Joint Consumer Groups misunderstand Joint Petitioners' proposal and the burdens that rolling recertification will have for consumers and ETCs. Consumers will need to remember their initial date of enrollment, and recertify on the basis of that date, even if it falls a day, week, or month after changing providers, which in many cases would lead consumers to be de-enrolled despite continued eligibility to receive service.

V. The Commission Should Maintain the 12-Month Benefit Port Freeze for Broadband Plans

- The Commission provided adequate notice of the port freeze by asking in the NPRM how to ease market entry and enhance competition and innovation in the market, and encourage more robust offerings. Opponents making claims of Administrative Procedure Act (APA) inadequacy had every opportunity to oppose the proposal during the rulemaking proceeding, but failed to do so. Further, there was already a 60-day port freeze in effect for over a year, and the FCC was not imposing something new but rather created a more stable version of something that already existed.
- The 12-month benefit port freeze *enhances* consumer choice and service offerings by promoting market entry, competition, and innovation. The port freeze is essential for wireless providers to meet the Lifeline Modernization Order's broadband minimum service standards and handset requirements. The trade-off of a longer term contract or financing plan in exchange for a more advanced handset and a better service plan is a reasonable one.
- The 12-month benefit port freeze counteracts potential waste, fraud and abuse in the Lifeline program. The abuse by “flippers” results in significant costs to service providers and the program as a whole, leaving many ETCs unwilling to offer advanced handsets without a significant additional subsidy.

VI. The Commission Should Restore the 60-Day Non-Usage Rule and 30-Day Notification Period

- The Commission should reconsider halving the non-usage and notification periods. Data from Sprint, TracFone and Joint Petitioners indicate that the change will be tremendously burdensome for low-income consumers and ETCs. A dramatically greater number of consumers will be unfairly de-enrolled despite a continued desire and eligibility to remain in the program. The change will lead to increased churn, which would dis-incentivize ETCs from offering advanced services and handsets. Third, the shorter notification period would be unduly administratively burdensome for ETCs.
- Indeed, during the rulemaking proceeding Joint Petitioners called on the FCC to eliminate the non-usage rule altogether.

VII. The Commission Should Ignore Calls to Ban In-Person Handset Distribution and Incentive Based Compensation

- In its petition for reconsideration, TracFone once again called on the Commission to prohibit real-time, in-person handset distribution and to ban incentive-based compensation. The Commission should ignore TracFone's proposal, which would harm consumers, competition, and the Lifeline program as a whole.
- TracFone's proposal to ban in-person handset distribution is an anticompetitive attempt to impose, by rule, its chosen business practice to the detriment of its competitors. This proposal has no basis in fact and would limit competition, undermining one of the core goals of the Lifeline Modernization Order. In-person enrollment and handset distribution has been an essential driver of Lifeline service adoption among low-income consumers, and promotes dignity in the enrollment process.
- TracFone's proposal to ban incentive-based compensation is similarly unsupported by the facts. Incentive-based compensation has played a vital role in driving adoption of Lifeline services. To the extent a few agents compensated on an incentive basis have acted improperly, the appropriate remedy is to adopt smart controls. Finally, in today's Lifeline market, agents serve only a clerical capacity, they do not make decisions about whether a consumer is eligible to participate in the program.